REMARKS

The issues outstanding in the Office Action mailed October 18, 2005, are the rejections under 35 U.S.C §§102 and 103, and the doctrine of obviousness-type double patenting. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Rejections Under 35 U.S.C §102

Claims 1 - 11 have been rejected under 35 U.S.C §102(b) over WO 99/20695 (WO '695). It is noted that this published application is equivalent to U.S. Patent 6,596,070, cited in the double patenting rejection, both the U.S. patent and the PCT application being commonly assigned. Reconsideration of the rejection is respectfully requested.

As noted at length in the Office Action, where an anticipation rejection is based on inherency, it is necessary for the reference to "inevitably" produce the material of the later claims. It is agreed that where basis exists for a belief that such material is produced, the burden may, in certain circumstances, be shifted to Applicants to disprove the PTO's assumption. The burden, however, does not shift in the present case. In particular, the TiO_2 layers produced in the WO are not discussed as being in rutile modification. Such a modification would require affirmative steps taken to produce. As such, the assumption upon reading the WO would be that the layers are equally likely *not* to be in rutile form. Accordingly, it is submitted that the case for inevitability required for an inherency rejection has not been met. Withdrawal of the rejection on this basis is respectfully requested.

Moreover, it is noted that the present claims require specifically defined thickness values. While, granted, it could arguably be possible for one of ordinary skill in the art to judicially select some of these values from the broad disclosure of the reference (although it is noted that the "interlayers" in the reference are not shown as having values below 1 nm, contrary to the 0.5 nm values at the bottom of the range in the present claims) such a judicious selection of overlapping portions of ranges in each of the minimum of five layers of the present claims does not rise to the level of an anticipation. See, for example, *In re Sivaramakrishnan*, 213 USPQ 441 (CCPA 1982), where it was held that such a

judicious selection was akin to ascertaining the combination of a safe by studying the dial. Such does not rise to the level of an anticipation. Accordingly, this provides additional basis for withdrawal of the rejection under 35 U.S.C §102.

Rejection Under 35 U.S.C §103

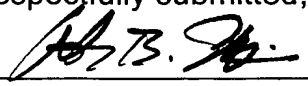
With respect to the rejection under 35 U.S.C §103 made over WO '695, it is submitted that the selection of thicknesses in accordance with the claims results in pigments having significantly increased brightness, greater luster, a more pronounced color flop and higher stability compared to the pigments of the reference. The pigments of the claims also possess a smoother surface, and thus are not suggested by the pigments of the reference, which have a weaker color flop. As a result, it is submitted that the pigments of the reference do not suggest the present claims, and withdrawal of this portion of the rejection is also respectfully requested.

Double Patenting

As noted, the U.S. '070 patent is equivalent to the PCT application cited in the rejections under 35 U.S.C §§102 and 103. Accordingly, for the reasons advanced above in overcoming the rejections under 35 U.S.C §§ 102 and 103, it is apparent that the U.S. patent does not render the present claims obvious. Withdrawal of the obviousness-type double patenting rejection should also be made.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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